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oral defamation which should be suable only in their courts. After the abolition of the ecclesiastical courts only the oral words which fell within these exceptional classes were actionable. See BOWER, CODE OF ACTIONABLE DEFAMATION, App. V, § 4; TOWNSHEND, SLANDER AND LIBEL, 4 ed., § 56. Slanders concerning one's trade or business make up one of the classifications so devised. See *Lumby v. Allday*, 1 Crompt. & Jer. 301. In the principal case as the words were written and not oral, their actionability must depend solely upon whether they produce appreciable injury to the reputation of the plaintiff. *Cramer v. Riggs*, 17 Wend. (N. Y.) 209. See ODGERS, LIBEL AND SLANDER, 5 ed., 1. The words used in the principal case seem at least susceptible of defamatory construction. Cf. *White v. Parks*, 93 Ga. 633, 20 S. E. 78; *Muetze v. Tuleur*, 77 Wis. 236, 46 N. W. 123; *Sanders v. Edmondson*, 56 S. W. 611 (Tex. Civ. App.). Hence the court should allow the jury to determine what interpretation is correct. *Sturt v. Blagg*, 10 Q. B. 906; *Hamilton v. Lowery*, 33 Ind. App. 184, 71 N. E. 54.

LIMITATION OF ACTIONS — WAIVER OF STATUTE — WORDS NECESSARY. — In an action to recover on an obligation the defendant pleaded the statute of limitations. The plaintiff set up a written waiver made after the statutory period had run, referring to the "alleged claim," and waiving "all rights of defense . . . by reason of the statute of limitations." Held, that the waiver is not binding on the defendant. *Small v. Jones*, 75 S. E. 605 (Ga.).

The principal case conforms to the majority rule that a waiver to be operative must clearly imply a new promise to pay the barred debt. *Martin v. Broach*, 6 Ga. 21; *Stockett v. Sasscer*, 8 Md. 374. The statutory defense was originally explained on the presumption of payment rebuttable by any acknowledgment of indebtedness. *Dowthwaite v. Tibbut*, 5 M. & S. 75. One modern explanation conceives of a new binding promise supported by the moral obligation raised by the past debt. *Pittman v. Elder*, 76 Ga. 371. But this view is at variance with the present attitude of the courts toward executed consideration. *Moore v. Elmer*, 180 Mass. 15, 61 N. E. 259. Moreover, if this explanation were correct, moral consideration would apply no less to a promise to waive the statutory defense. But such is not the law. *Stockett v. Sasscer*, *supra*. The only explanation logically tenable is that the statutory bar is a personal defense, allowed by the rules of procedure, which, under certain conditions, the party will be deemed to have irrevocably waived. The arbitrary rule requiring a promise to pay seems referable to the existence of the doctrine of adequate moral consideration at the time when the statute was regarded as destroying, not the remedy, but the actual debt.

PAROL EVIDENCE RULE — SUBSTANTIVE LAW EXPRESSED IN TERMS OF EVIDENCE — DEED: PAROL AGREEMENT THAT IT IS TO TAKE EFFECT ON CONDITION. — In an action by a lessee for the breach of the lease, the lessor sought to prove an oral agreement that the lease had been delivered conditionally. Held, that the evidence was properly excluded. *American Bill Posting Co. v. Geiger*, 137 N. Y. Supp. 148.

For more than half a century it has been settled that parol evidence could be brought in to show that a written contract was in fact subject to an oral condition precedent. *Pym v. Campbell*, 6 E. & B. 370; *Cleveland Refining Co. v. Dunning*, 115 Mich. 238, 73 N. W. 239. This is allowed, not to vary the terms of the writing, but to show that no contract ever existed. When carried to its full extent, this doctrine abolishes the rule of substantive law, masquerading as a rule of evidence, that a deed cannot be delivered in escrow to the grantee. This rule, although said by text-books to be the law in England, is not fully supported by the authorities there. See NORTON, DEEDS, 16 *et seq.*; PHIPSON, EVIDENCE, 552. In this country, however, a deed cannot be delivered

in escrow to the grantee. *Baker v. Baker*, 159 Ill. 394, 42 N. E. 867; *Larsh v. Boyle*, 36 Colo. 18, 86 Pac. 1000. The doctrine is chiefly sustained by its age, and is difficult to defend on principle. WIGMORE, EVIDENCE, § 2408. If limited to deeds conveying realty, a possible reason might be found in the fact that such a deed is an operative instrument, which, when properly executed, is the formal act that transfers the legal title, whereas most other instruments merely evidence the creation by consent of legal relations between the parties. It is reasonable to rely on such a distinction because of the interest of society in the stability of operative instruments. See *Stiebel v. Grosberg*, 202 N. Y. 266, 271, 95 N. E. 692, 694.

PUBLIC SERVICE COMPANIES — WATER COMPANIES — DUTY TO INCREASE FACILITIES. — The defendant was supplying the city of Birmingham with water under a thirty-year franchise. Upon a bill filed to compel the defendant to supply water at sufficient pressure to a newly developed section, which necessitated larger facilities than the charter required, a decree was issued, although it appeared that such service would be unprofitable. *Held*, that such a decree is correct. *Birmingham Waterworks Co. v. City of Birmingham*, 58 So. 204 (Ala.).

While the regulation of public water companies has never gone so far as in the present case, the decision seems within the principles of public service law. The service that can be required of a public service company is limited to such service as the company has professed to render. *Browne v. Brandt*, [1902] 1 K. B. 696; *Crouch v. Arnett*, 71 Kan. 49, 79 Pac. 1086. It can, of course, be compelled to give the service required in the charter. *City of Potwin Place v. Topeka Ry. Co.*, 51 Kan. 609, 33 Pac. 309; *Independent School District of Le Mars v. Le Mars City Water & Light Co.*, 131 Ia. 14, 107 N. W. 944. The profession of the company is, however, not limited by the charter, but includes such service as it reasonably should render. *Haugen v. Albina Light & Water Co.*, 21 Or. 411, 28 Pac. 244. *Cf. Tampa v. Tampa Water Works Co.*, 45 Fla. 600, 34 So. 631. The fact that the particular service required is unprofitable is no defense. *People ex rel. Cantrell v. St. Louis, A. & T. H. R. Co.*, 176 Ill. 512, 52 N. E. 292; *Savannah & Ogeechee Canal Co. v. Shuman*, 91 Ga. 400, 17 S. E. 937. On these principles a court can require a public service company to carry out improvements which will bring the service up to the efficiency which the company can reasonably be said to have professed; and the improvement required in the principal case seems within the limits of such service.

QUASI-CONTRACTS — WAIVER OF TORT — EFFECT ON TITLE. — B., being in possession of A.'s opals worth £400, sold them to C. without mentioning A.'s ownership. A. sued B. in detinue and took judgment by consent for £750. The pleadings in this action were framed to some extent on the theory of assumption, although the evidence was clear that there was no contract between A. and B. B. became bankrupt and A. sued C. in detinue. *Held*, that he cannot recover. *Bradley & Cohn, Ltd., v. Ramsay & Co.*, 106 L. T. R. 771 (Eng., C. A., June, 1912). See NOTES, p. 171.

RAILROADS — RAILROAD CROSSINGS — CONSTITUTIONALITY OF ORDINANCE REQUIRING RAILROAD TO CONSTRUCT A VIADUCT SUITABLE FOR USE BY STREET RAILWAY. — A city council by the authority of the legislature passed an ordinance requiring a railroad to construct over its tracks at a highway crossing a viaduct strong enough to accommodate a street car line. The street railway was not required to contribute. *Held*, that the ordinance is not unconstitutional. *Missouri Pacific Ry. Co. v. City of Omaha*, 197 Fed. 516. See NOTES, p. 169.